

SENATE BILL NO. 212

INTRODUCED BY V. JACKSON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REVOCATION OF A MEDICAL MARIJUANA REGISTRATION IF THE REGISTRANT VIOLATES LIMITATIONS SPECIFIED IN THE MEDICAL MARIJUANA ACT; DEFINING "THC"; PROVIDING STANDARDS FOR DETERMINING IF A REGISTRANT WAS IN VIOLATION OF THE ACT AT HEARING OR JUDICIAL REVIEW; REQUIRING A LAW ENFORCEMENT OFFICER TO REQUEST A BLOOD TEST FOR A DRIVER WHO IS A QUALIFYING MEDICAL MARIJUANA PATIENT; REQUIRING THE RESULTS OF THE BLOOD TEST TO BE FORWARDED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING A LAW ENFORCEMENT OFFICER TO SEIZE THE REGISTRY IDENTIFICATION CARD OF AN ARRESTED PERSON WHO IS A QUALIFYING MEDICAL MARIJUANA PATIENT AND REFUSES TO SUBMIT TO THE REQUESTED TESTS; AND AMENDING SECTIONS 50-46-102, 50-46-103, 50-46-205, 61-8-402, AND 61-8-409, MCA."

WHEREAS, residents of Montana who qualify under the Medical Marijuana Act are issued a registration card that allows the registrant to possess marijuana; and

WHEREAS, the Medical Marijuana Act specifies limitations to protect public safety; and

WHEREAS, the Medical Marijuana Act does not specify consequences for a registrant who violates the specified limitations; and

WHEREAS, the limitations of the Medical Marijuana Act do not permit a person to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; and

WHEREAS, marijuana causes significant impairment in driving, increasing the risk for serious injury or death as the result of a motor vehicle crash; and

WHEREAS, a breath test does not detect the presence of marijuana; and

WHEREAS, the concentration of THC in blood plasma of 5 ng/ml or greater in a driver of a motor vehicle increases the risk of a fatal traffic crash; and

WHEREAS, the combination of THC and alcohol in a driver of a motor vehicle increases the risk of a fatal traffic crash more than either drug alone.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1

2 **Section 1.** Section 50-46-102, MCA, is amended to read:

3 **"50-46-102. Definitions.** As used in this chapter, the following definitions apply:

4 (1) (a) "Caregiver" means an individual, 18 years of age or older, who has agreed to undertake
5 responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying
6 patient may have only one caregiver at any one time.

7 (b) The term does not include the qualifying patient's physician.

8 (2) "Debilitating medical condition" means:

9 (a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency
10 syndrome, or the treatment of these conditions;

11 (b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of
12 the following:

13 (i) cachexia or wasting syndrome;

14 (ii) severe or chronic pain;

15 (iii) severe nausea;

16 (iv) seizures, including but not limited to seizures caused by epilepsy; or

17 (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis
18 or Crohn's disease; or

19 (c) any other medical condition or treatment for a medical condition adopted by the department by rule.

20 (3) "Department" means the department of public health and human services.

21 (4) "Marijuana" has the meaning provided in 50-32-101.

22 (5) "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer,
23 or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms
24 or effects of a qualifying patient's debilitating medical condition.

25 (6) "Physician" means a person who is licensed under Title 37, chapter 3.

26 (7) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating
27 medical condition.

28 (8) "Registry identification card" means a document issued by the department that identifies a person
29 as a qualifying patient or caregiver.

30 (9) "THC" means tetrahydrocannabinol.

1 ~~(9)~~(10) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or
2 preparation of marijuana.

3 (b) The term does not include the seeds, stalks, and roots of the plant.

4 ~~(10)~~(11) "Written certification" means a qualifying patient's medical records or a statement signed by a
5 physician stating that in the physician's professional opinion, after having completed a full assessment of the
6 qualifying patient's medical history and current medical condition made in the course of a bona fide
7 physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits
8 of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."
9

10 **Section 2.** Section 50-46-103, MCA, is amended to read:

11 **"50-46-103. Procedures -- minors -- confidentiality -- report to legislature.** (1) The department shall
12 establish and maintain a program for the issuance of registry identification cards to persons who meet the
13 requirements of this chapter.

14 (2) Except as provided in subsection (3), the department shall issue a registry identification card to a
15 qualifying patient who submits the following, in accordance with department rules:

16 (a) written certification that the person is a qualifying patient;

17 (b) an application or renewal fee;

18 (c) the name, address, and date of birth of the qualifying patient;

19 (d) the name, address, and telephone number of the qualifying patient's physician; and

20 (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.

21 (3) The department shall issue a registry identification card to a minor if the materials required under
22 subsection (2) are submitted and the custodial parent or legal guardian with responsibility for health care
23 decisions for the minor signs and submits a written statement that:

24 (a) the minor's physician has explained to that minor and to the custodial parent or legal guardian with
25 responsibility for health care decisions for the minor the potential risks and benefits of the medical use of
26 marijuana; and

27 (b) the custodial parent or legal guardian with responsibility for health care decisions for the minor:

28 (i) consents to the medical use of marijuana by the minor;

29 (ii) agrees to serve as the minor's caregiver; and

30 (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of

1 marijuana by the minor.

2 (4) The department shall issue a registry identification card to the caregiver who is named in a qualifying
3 patient's approved application if the caregiver signs a statement agreeing to provide marijuana only to qualifying
4 patients who have named the applicant as caregiver. The department may not issue a registry identification card
5 to a proposed caregiver who has previously been convicted of a felony drug offense. A caregiver may receive
6 reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.

7 (5) (a) The department shall verify the information contained in an application or renewal submitted
8 pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the
9 application or renewal.

10 (b) The department may deny an application or renewal only if the applicant did not provide the
11 information required pursuant to this section, the department determines that the information was falsified, or the
12 applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection
13 of an application or renewal is considered a final department action, subject to judicial review.

14 (c) The department shall revoke the registration if a qualifying patient or caregiver violates a limitation
15 imposed under 50-46-205. Revocation of a registration is considered a final department action, subject to judicial
16 review.

17 (6) The department shall issue a registry identification card within 5 days of approving an application or
18 renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must
19 state:

20 (a) the name, address, and date of birth of the qualifying patient;

21 (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;

22 (c) the date of issuance and expiration date of the registry identification card; and

23 (d) other information that the department may specify by rule.

24 (7) A person who has been issued a registry identification card shall notify the department of any change
25 in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient's
26 debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the
27 department, the registry identification card is void.

28 (8) The department shall maintain a confidential list of the persons to whom the department has issued
29 registry identification cards. Individual names and other identifying information on the list must be confidential and
30 are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department;

or

(b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

(9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians."

Section 3. Section 50-46-205, MCA, is amended to read:

"50-46-205. Limitations of Medical Marijuana Act. (1) This chapter does not permit:

(a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) the smoking of marijuana:

(i) in a school bus or other form of public transportation;

(ii) on any school grounds;

(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

(2) Upon a departmental hearing or judicial review of a violation of this section, the concentration of THC in a person at the time of a test, as shown by analysis of a sample of the person's blood drawn within a reasonable time after the alleged act, gives rise to the following inferences:

(a) If there was at the time of the test a plasma THC concentration of 1 ng/ml or less, it may be inferred that the person was not under the influence of marijuana.

(b) If there was at the time of the test a plasma THC concentration of more than 1 but less than 5 ng/ml and there was a blood alcohol concentration in excess of 0.02, it may be inferred that the person was under the influence of marijuana. The inference is rebuttable.

(c) If there was at the time of the test a plasma THC concentration of 5 ng/ml or greater, it may be inferred that the person was under the influence of marijuana. The inference is rebuttable.

~~(2)~~(3) Nothing in this chapter may be construed to require:

1 (a) a government medical assistance program or private health insurer to reimburse a person for costs
2 associated with the medical use of marijuana; or

3 (b) an employer to accommodate the medical use of marijuana in any workplace."
4

5 **Section 4.** Section 61-8-402, MCA, is amended to read:

6 **"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in actual
7 physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a
8 test or tests of the person's blood or breath for the purpose of determining any measured amount or detected
9 presence of alcohol or drugs in the person's body.

10 (2) (a) The test or tests must be administered at the direction of a peace officer when:

11 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual
12 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,
13 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

14 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

15 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of
16 a vehicle:

17 (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision
18 resulting in property damage; or

19 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in
20 45-2-101, or death.

21 (b) (i) The arresting or investigating officer may designate which test or tests are administered.

22 (ii) The arresting or investigating officer shall request a blood test for alcohol and drugs if the person is
23 a qualifying medical marijuana patient or caregiver who possesses a registry identification card issued pursuant
24 to 50-46-103.

25 (3) If the arrested person possesses a registry identification card issued pursuant to 50-46-103, the
26 results of the blood test must be forwarded to the department of public health and human services.

27 ~~(3)~~(4) A person who is unconscious or who is otherwise in a condition rendering the person incapable
28 of refusal is considered not to have withdrawn the consent provided by subsection (1).

29 ~~(4)~~(5) If an arrested person refuses to submit to one or more tests requested and designated by the
30 officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf

1 of the department, immediately seize the person's driver's license. The peace officer shall immediately forward
2 the license to the department, along with a report certified under penalty of law stating which of the conditions
3 set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to
4 submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the
5 department shall suspend the license for the period provided in subsection ~~(6)~~ (8).

6 (6) If an arrested person is a qualifying medical marijuana patient or caregiver who possesses a registry
7 identification card issued pursuant to 50-46-103 and refuses to submit to one or more of the tests requested and
8 designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer
9 shall, on behalf of the department, immediately seize the person's registry identification card. The card must be
10 returned to the department of public health and human services.

11 ~~(5)(7)~~ Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a
12 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of
13 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing
14 provided in 61-8-403.

15 ~~(6)(8)~~ (a) Except as provided in subsection ~~(6)(b)~~ (8)(b), the following suspension periods are applicable
16 upon refusal to submit to one or more tests:

17 (i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

18 (ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the
19 records of the department, a suspension of 1 year with no provision for a restricted probationary license.

20 (b) If a person who refuses to submit to one or more tests under this section is the holder of a
21 commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges,
22 the department shall:

23 (i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

24 (ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life,
25 subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person
26 is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior
27 conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same
28 effect as a previous testing refusal for purposes of this subsection ~~(6)(b)~~ (8)(b).

29 ~~(7)(9)~~ A nonresident driver's license seized under this section must be sent by the department to the
30 licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or

1 more tests.

2 ~~(8)~~(10) The department may recognize the seizure of a license of a tribal member by a peace officer
3 acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or
4 reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or
5 regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions
6 occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the
7 department under this subsection is not reviewable under 61-8-403.

8 ~~(9)~~(11) A suspension under this section is subject to review as provided in this part.

9 ~~(10)~~(12) This section does not apply to blood and breath tests, samples, and analyses used for purposes
10 of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an
11 offense not in this part."

12

13 **Section 5.** Section 61-8-409, MCA, is amended to read:

14 **"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical
15 control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary
16 alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration,
17 upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual
18 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in
19 violation of 61-8-410.

20 (2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting
21 to a preliminary alcohol screening test pursuant to this section.

22 (3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit
23 to the preliminary alcohol screening test will result in the suspension for up to 1 year of that person's driver's
24 license.

25 (4) If the person refuses to submit to a test under this section, a test will not be given. However, the
26 refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

27 (5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited
28 to determining whether a peace officer had a particularized suspicion that the person was driving or in actual
29 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in
30 violation of 61-8-410 and whether the person refused to submit to the test.

(6) The provisions of 61-8-402(3)(4) through (8) (10) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

7 - END -